

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Postal Rate and Fee Changes, 2005

Docket No. R2005-1

DOUGLAS F. CARLSON
MOTION TO COMPEL THE UNITED STATES POSTAL SERVICE
TO RESPOND TO INTERROGATORY DFC/USPS-47

June 9, 2005

On May 17, 2005, I filed interrogatory DFC/USPS-47. This interrogatory reads:

- a. Please provide the total number of collection boxes that were in service as of the most-recent date for which data are available. In your response, please identify Express Mail and non-Express Mail collection boxes separately.
- b. Please identify the data system from which the data provided in response to part (a) were derived or obtained.

On May 27, 2005, the Postal Service filed an objection to this interrogatory on the grounds of relevance and cumulative burden.¹

In response to interrogatory DBP/USPS-1, the Postal Service previously provided detailed information on the number of each type of collection box that was in service at or near the end of each of the last four fiscal years. In its response to DBP/USPS-1, the Postal Service provided data on box type detailed to the level of wall box, snorkel (drive-up) box, and so forth. In responding to

¹ Objection of the United States Postal Service to Interrogatory of Douglas F. Carlson (DFC/USPS-47) ("Objection"), filed May 27, 2005.

DBP/USPS-1, the Postal Service apparently spent a “substantial amount of time and resources”² — a consequence that was not necessarily startling or unreasonable given the Postal Service’s statutory obligation to provide information to citizen participants when seeking an across-the-board increase in postage rates. In contrast, DFC/USPS-47 requests no detailed information by box type beyond a two-way breakdown of Express Mail and non-Express Mail boxes for one current point in time.

DFC/USPS-47 seeks information on the number of boxes in service as of the most-recent date for which data are available. Given the timing of this discovery dispute, this date should be sometime in June 2005. Fiscal year 2004 presumably ended on or around September 30, 2004. Thus, DFC/USPS-47 seeks information that is at least eight months fresher than the data provided in response to DBP/USPS-1. In reality, however, DFC/USPS-47 is requesting data that probably are closer to *one year* fresher than the data provided in response to DFC/USPS-47. As the Postal Service did not previously bother to point out, but as the Postal Service acknowledged in its compelled response to DFC/USPS-21(c), the Collection Box Management System (CMBS) data at the headquarters level may differ from the data held at the district level. Presumably, data at the district level more closely reflect actual operational conditions than data at the headquarters level. I believe that CBMS data from the district level were uploaded to the headquarters level only periodically — perhaps quarterly. Therefore, the data that the Postal Service provided in response to DBP/USPS-1 that ostensibly were for the end of fiscal year 2004 may have been several

² Objection at 2.

months old already. Moreover, the Postal Service is converting to a new Web-based Collection Point Management System (CPMS) that may use a single database that would allow a headquarters-level query to examine live data reflecting current operational conditions. While I am not privy to any details about CPMS because the Postal Service objected to DFC/USPS-21(d), it is possible that the Postal Service could respond to DFC/USPS-47 by querying a database that would contain information that is approximately one year more current than the data provided in response to DBP/USPS-1. At worst, however, DFC/USPS-47 should produce data that are eight months fresher than the data provided in response to DBP/USPS-1.

The first question, then, is whether the number of collection boxes in service as of June 2005 is relevant to the value of First-Class Mail and Express Mail service in the test year. The answer clearly is yes, as the number of collection boxes is one measure of the ease of using these services and, therefore, the value of these services. The next question is whether the number of collection boxes in service as of June 2005 is more relevant to the value of First-Class Mail and Express Mail service in the test year than data from eight or more months ago. The Postal Service has not provided any projections in its direct testimony about the number of collection boxes that will be in service in the test year, even though Rule 54(e) apparently requires the Postal Service to provide this information along with its request, so participants are left to discover this information. The response to DBP/USPS-1 indicates a clear and fairly sharp downward trend in the number of collection boxes. Absent any reason found in

the Postal Service's direct testimony or elsewhere to believe that the downward trend is levelling off or reversing, refreshed data from June 2005 would provide a better indication of the value of First-Class Mail and Express Mail service in the test year than data from up to one year ago would. The Postal Service suggests that data from the base year, 2004, should be sufficient for purposes of this case. Objection at 1–2. However, this assertion is hollow, as it ignores mountains of the Postal Service's own testimony, as well as Commission rules, that projects demand, cost, and volume conditions in the test year. If anything, the number of collection boxes in service in the test year arguably is more relevant than the number of collection boxes in service in the base year. Thus, the number of collection boxes in service will provide another method by which participants can examine and challenge the demand and volume projections that witnesses Thress (USPS-T-7) and Bernstein (USPS-T-8) provided, apparently without examining the rapidly declining number of collection boxes. The relevance of fresh data from June 2005 is beyond question.

The Postal Service also complains about the burden that a response to this interrogatory supposedly would impose on the agency. However, the Postal Service's objection is defective because it never provides any details about the burden to respond to DFC/USPS-47 beyond an empty statement that “[t]here would be an additional burden.” Every interrogatory imposes *some* burden. Rule 26(c) requires a participant claiming undue burden to state “with particularity the effort that would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible.” The Postal Service's claim

of undue burden seems to be based on the effort expended to respond to DBP/USPS-1, an effort that the Postal Service explained in its objection to DFC/USPS-21.³ DFC/USPS-21(a), which I filed before the Postal Service responded to DBP/USPS-1, sought historical information as of April 1 of each of the past seven years. The Postal Service objected, and I did not move to compel a response to this interrogatory part because I agreed that historical information provided as of the end of fiscal years was substantially similar to historical information provided as of April 1 of each year. Fresh data for the current year, however, are an entirely different matter. Even the objection to DFC/USPS-21(a) focused on the effort expended to respond to DBP/USPS-1 and did not identify the burden associated with responding to DFC/USPS-21(a), which sought data at a summary and more-aggregated level than the Postal Service provided in response to DBP/USPS-1. The burden associated with responding to DBP/USPS-1 may or may not shed light on the burden to respond to DFC/USPS-47. The Postal Service's focus on the burden to respond to DBP/USPS-1 serves only one purpose in the context of this dispute: it proves that estimating the burden is possible, thus triggering the detailed explanation that Rule 26(c) requires when an estimate of the burden is "possible."

Perhaps the Postal Service's objection for cumulative burden assumes that any additional work on this subject would result in an undue cumulative burden. Given the relevance of the subject matter, it is hard to imagine that, for example, one more hour of work would constitute an undue burden. Since it is

³ Objections of the United States Postal Service to Interrogatories of Douglas F. Carlson (DFC/USPS-20–21) at 3, filed May 2, 2005.

not true that any additional burden of any magnitude would automatically constitute an undue cumulative burden, the Postal Service still needed to explain the burden associated with responding to *this* discovery request.

In short, I am faced with a claim of undue burden that is based on the burden to respond to a previous interrogatory and that makes no attempt to quantify the burden associated with responding to DFC/USPS-47, the interrogatory in question. I have no basis on which to argue that a particular number of hours of work would be reasonable given the importance of this information to this case, since the Postal Service has withheld the number of hours. All I know is that my interrogatory requires a simpler query than DBP/USPS-1 and focuses on the current year, which surely would avoid the complexity associated with running queries against historical data. The Postal Service probably will attempt to backfill this deficiency in its objection by providing additional information on the burden in its opposition to this motion. To ensure fairness and due process, I request that the presiding disregard all new information that the Postal Service may provide about the burden associated with responding to DFC/USPS-47 because the Postal Service failed to provide this information in its objection — and therefore failed to comply with Rule 26(c). Consequently, I have had no opportunity to respond to the claimed undue burden.

Finally, the Postal Service attempts to make its case for the cumulative burden of DFC/USPS-47 by asking whether I could obtain “most recent” information “again in three weeks, or in six weeks, or in nine weeks.” Objection

at 2. To resolve this hypothetical problem, the Postal Service advocates cutting off updates at a “reasonable point in time” — fiscal year 2004. *Id.* The Postal Service’s argument is a strawman because I have not submitted such a series of discovery requests, nor do I have a history of doing so. Moreover, the Postal Service’s premise that updates should be cut off as of the base year is flawed because, as I described above, demand, volume, and value of service in the test year are relevant — and Rule 54 requires this analysis. The Postal Service’s argument might be more appealing if the Postal Service had provided information on collection boxes for the test year, but the Postal Service did not, and it appears to try to avoid this touchy service issue whenever possible. Since the Postal Service has not provided this information for the test year, I am entitled to obtain reasonably fresh data for my own analysis. I have attempted to do so with one interrogatory that is reasonably calculated to lead to the discovery of admissible evidence and that will not impose an undue burden on the Postal Service.

For the reasons described herein, the presiding officer should direct the Postal Service to respond to DFC/USPS-47.

Respectfully submitted,

Dated: June 9, 2005

DOUGLAS F. CARLSON